

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING THIRTY-FIFTH
INTERIM FEE APPLICATION OF CAPLIN & DRYSDALE, CHARTERED**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Thirty-Fifth Interim Fee Application of Caplin & Drysdale, Chartered (the "Application").

BACKGROUND

1. Caplin & Drysdale, Chartered ("Caplin & Drysdale"), was retained as national counsel to the Official Committee of Asbestos Personal Injury Claimants. In the Application, Caplin & Drysdale seeks approval of fees totaling \$868,243.75 and expenses totaling \$147,341.92 for its services from October 1, 2009 through December 31, 2009 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2010, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with

precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Caplin & Drysdale based on our review, and we received a response from Caplin & Drysdale, portions of which response are quoted herein.

DISCUSSION

3. In our initial report, we noted the following time entries which appeared to include non-working travel:

12/09/09	AJS	295.00	5.60	Review of e-mail from ACM regarding Libby settlement (0.1); travel to New York (2.5) ; review of TDP, plan documents, e-mails from Cohn and suggested changes to TDP (3.0).
12/10/09	AJS	295.00	9.70	Preparation for meeting regarding TDP revision and phone call with ACM regarding same (1.0); meeting regarding TDP revision with EI, Frankel, Wyron, Cohn and Heberling (3.7); meetings with EI regarding TDP revision (0.4); travel to Washington (4.5) ; preparation of e-mails to ACM regarding meeting and review of e-mails from ACM regarding same (0.1).

Pursuant to Local Rule 2016-2(d)(viii): “Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates.” Thus, we asked Caplin & Drysdale whether the required 50% discount had been applied to these time entries.

Caplin & Drysdale responded:

The non-working travel time referenced in . . . the Initial Report should have been billed at 50% of attorney Andrew Sackett’s regular hourly rate. Caplin & Drysdale will take a voluntary reduction regarding these fees, and apologizes for the clerical error.

We appreciate Caplin & Drysdale’s response and, consistent with the response, recommend that the fees for the seven hours of non-working travel time be reduced by 50%, for a reduction of

\$1,032.50¹ in fees.

4. We noted the following meal expenses which appeared excessive:

2456467	Nathan D. Finch - Dinner Meal while on Travel to/from Pittsburgh, PA, 9/18/09	11/11/2009	68.71
2456470	Nathan D. Finch - Working Lunch Meal w/ JPW & KCM, 11/3/09	11/11/2009	125.50
2467497	Nathan D. Finch - Working Lunches, re: Brief Preparations, 11/9/09 - 11/12/09	12/07/2009	84.20

It appears to us that one can dine satisfactorily in most locales for \$25 for breakfast, \$35 for lunch, and \$55 for dinner. In response to our inquiry, Caplin & Drysdale provided the following information:

The charge for a dinner meal on September 18, 2009 was incurred in Pittsburgh. The charge on November 11 was incurred in Washington, D.C. and represents a working lunch for three people. The lunch charge dated December 17 represents three working lunches, on November 9, 10 and 12, respectively, and was incurred in Washington, D.C.

Based on the guidelines stated above, we recommend that the \$68.71 charge for dinner for one in Pittsburgh be reduced to \$55.00, for a reduction of \$13.71 in fees. In addition, we do not believe that Caplin & Drysdale has carried its burden of proof on why the lunch charges of \$125.50 and \$84.20 should be paid by the estate. There is nothing in the response to indicate they were meeting with individuals outside the office. Furthermore, these attorneys would have had to purchase lunch regardless of the task on which they were working. Thus, we recommend a total reduction of \$223.41 in expenses.

5. We noted the following car service charges which, without additional information,

¹Seven hours at Mr. Sackett's regular hourly rate of \$295.00 per hour = \$2,065.00. One-half that amount is \$1,032.50.

appeared excessive:

2468577	BostonCoach Corporation - Car Svc. from Westin Convention Center in PA to Bethesda, MD, 10/14/09 (NDF)	12/14/2009	1,069.30
2468640	BostonCoach Corporation - Car Svc. to/from Westin Convention Center in Pittsburgh, PA, 9/11/09 - 10/12/09 (NDF)	12/15/2009	3,299.16

In response to our inquiry, Caplin & Drysdale provided the following information:

Below is the information that you request in . . . the Initial Report regarding certain car service charges. (Caplin & Drysdale has determined that the most inexpensive and efficient manner of travelling between Washington, D.C. and Pittsburgh is via car service.)

Date	Charge	Departure/Destination	One way/RT	Purpose
9/11/09	\$1,452.70	Westin Convention Center, Pittsburgh, PA to 1 Thomas Circle, Washington, D.C. (NDF)	One-way	Return to D.C. office from Pittsburgh hearing.
9/18/09	\$947.94	Pittsburgh, PA to Bethesda Maryland (NDF)	One-way	Return home from Pittsburgh hearing
10/12/09	\$898.52	Bethesda, MD to Westin Convention Center, Pittsburgh, PA (NDF)	One-way	Transportation Pittsburgh hearing
Total (9/11/09-10/12/09):		<u>\$3,299.16</u>		

10/14/09	\$1,069.30	Westin Convention Center, Pittsburgh, PA to Bethesda, MD (NDF)	One-way	Transportation to hearing for Caplin & Drysdale attorney Nathan D. Finch
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We have found that a one way, non-stop, refundable airline ticket from Pittsburgh to Washington, DC (Reagan), or from Washington, DC (Reagan) to Pittsburgh, can be purchased with little advance


notice for \$900.00, or \$950.00 if checked bags are included. Thus, we accept Caplin & Drysdale's response with respect to the car service charges of \$947.94, \$898.52, and \$1,069.30.² However, we recommend that reimbursement of the \$1,452.70 car service charge be reduced to \$1,050.00,³ for a reduction of \$402.70 in expenses.

CONCLUSION

6. Thus, we recommend approval of \$867,211.25 in fees (\$868,243.75 minus \$1,032.50) and \$146,715.81 in expenses (\$147,341.92 minus \$626.11) for Caplin & Drysdale's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 
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FEE AUDITOR

²We understand that air travel will necessitate the cost of a taxi to and from the airport, at an added cost of approximately \$50.00 at each end, for a total of \$100.00 per trip.

³\$950.00 for one-way air fare, plus an additional \$100.00 for taxi charges to and from the airport

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 28th day of May, 2010.



Warren H. Smith

SERVICE LIST

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